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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	NO. CR 14-0196 CRB
)	
Plaintiff,)	GOVERNMENT'S MOTION TO REVOKE BOND
)	PURSUANT TO 18 U.S.C. § 3148
v.)	
)	Date: May 5, 2014
ALAN CHIU,)	Time: 9:30 a.m.
)	Court: Hon. Jacqueline Scott Corley
Defendant.)	
)	

On April 25, 2014, upon the Petition for Arrest Warrant for Defendant Under Pretrial Supervision, filed under seal that same day by U.S. Pretrial Services Deputy Chief Officer Silvio Lugo, Magistrate Judge Nathanael Cousins issued a warrant for the arrest of defendant Alan Chiu. Chiu was arrested on April 25, 2014 and made his initial appearance before Magistrate Judge Joseph Spero on April 28, 2014 with counsel Sara Rief. The Court advised Chiu of the allegations in the Petition and set the matter over to April 30, 2014 for detention hearing before Magistrate Judge Cousins. Chiu appeared in custody before Magistrate Judge Cousins on April 30, 2014, at which time the government advised the Court that it was moving to revoke Chiu's release and to detain Chiu during the pendency of the

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proceedings in the instant case. Sarah Potter, appearing on behalf of Ms. Rief, requested that the hearing be continued until Ms. Rief could be available. The matter is currently scheduled for hearing before Magistrate Judge Jacqueline Scott Corley on May 5, 2014 at 9:30 a.m.

In anticipation of the hearing, and pursuant to the provisions of 18 U.S.C. § 3148(b), the government hereby moves to revoke the defendant's bond and for an order of detention pending trial. The government's motion is based on probable cause to believe that Chiu has committed a crime while on release, and clear and convincing evidence that Chiu has violated the condition of release that he not possess any controlled substance. In light of Chiu's actions, which are discussed below, the government moves for detention on grounds that there are no conditions or combination of conditions that will assure that Chiu will not pose a danger to the community and that Chiu is unlikely to abide by any release conditions this Court may impose.

DISCUSSION

A. Procedural History

Defendant Alan Chiu was arrested on March 26, 2014 on a warrant issued by Magistrate Judge Nathanael Cousins in connection with a criminal complaint charging Chiu and twenty-five other defendants with a range of federal offenses, including money laundering, drug, firearms, and public corruption offenses. *See, Affidavit of Special Agent Emmanuel V. Pascua in Support of Complaint*, 3 14 70421 NC, filed March 24, 2014, Exhibit 1, attached. According to the allegations in the Pascua Affidavit, which described a long-running investigation of defendant Kwok Cheung Raymond Chow and others, Chow is the leader of the Chee Kung Tong, an Asian organized crime organization based in San Francisco's Chinatown. Over the course of three years from March 2011 and the arrests on March 26, 2014, Chow and a number of individuals associated with him, including defendant Chiu, engaged in a range of criminal activity with an FBI undercover agent known as UCE-4599. As described in the Pascua Affidavit, Chiu laundered a total of \$170,000 in purported illicit funds for UCE-4599 between August 1, 2011 and December 13, 2011. *See, Exh. 1 at pp. 43-44.* That is, on August 1, 2011, Chiu received \$33,000 from UCE-4599 and laundered the money by writing four checks totaling \$30,000 on a bank account that Chiu shared with another individual. Chiu kept \$3,000 as a fee. On September 22, 2011, Chui laundered \$60,000 for UCE-4599 and kept \$6,000 as his fee. On October 19, 2011, Chui

1 laundered \$40,000 for UCE-4599 and kept \$4,000 as his fee. Finally, on December 13, 2011, Chui
2 laundered \$20,000 for UCE-4599 and was paid \$2,000 by UCE-4599. In connection with these
3 transactions, and as payment for Raymond Chow permitting these and other transactions to take place,
4 UCE-4599 paid Chow \$6,000.

5 Chiu was charged in the criminal complaint with one count of money laundering, in violation of
6 18 U.S.C. § 1956(a)(3)(A), in connection with the August 1, 2011 transaction. *Id.*, at p. 43. In Count
7 Four of the indictment returned on April 3, 2014, Chiu was charged with the same offense in connection
8 with the August 1, 2011 money laundering transaction. *See, Indictment, United States v. Kwok Cheung*
9 *Chow et al.*, CR 14 196 CRB, docket Document 113. The maximum penalty for a violation of 18 U.S.C.
10 § 1956(a)(3)(A) is twenty years in prison, a \$250,000 fine, three years supervised release, and a \$100
11 special assessment.

12 After their arrests on March 26, 2014, Chiu and a number of other defendants made their initial
13 appearances before Magistrate Judge Nathanael Cousins the same date. The government agreed to
14 Chiu's release on a \$100,000 unsecured bond, which was co-signed by Chiu's wife, Diana Lee, who
15 resides with Chiu at 6306 Pebble Beach Drive in Vallejo. The bond contained the standard conditions
16 that Chiu not commit any federal, state, or local crime. It also contained a number of special conditions,
17 including that Chiu "not use alcohol to excess and shall not use or possess any narcotic or other
18 controlled substance without a legal prescription." *See*, Exhibit 2, attached. Chiu's wife was present at
19 the hearing and co-signed the bond as surety after being advised of the conditions of release. On April
20 3, 2014, the defendant appeared again before Magistrate Judge Cousins for further bond hearing after
21 preparation of a bail study by Pretrial Services. An Addendum to Release Conditions was signed by
22 Chiu and the Court. The Addendum added conditions that Chiu submit to drug testing as directed by
23 Pretrial Services and not change his residence without the prior approval of Pretrial Services. *See*,
24 Exhibit 3, attached.

25 As noted above, on April 25, 2014, Magistrate Judge Cousins authorized a warrant for Chiu's
26 arrest based on a Petition filed by Pretrial Services Officer Silvio Lugo. Chiu was arrested the same day.

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1 **B. Statutory Authority for the Instant Motion**

2 Under 18 U.S.C. § 3148(b), an attorney for the government may initiate a proceeding for
 3 revocation of an order of release by filing a motion with the district court. “The judicial officer *shall*
 4 *enter* an order of revocation and detention if, after a hearing, the judicial officer --- (1) finds that there is
 5 (A) probable cause to believe that the person has committed a Federal, State, or local crime while on
 6 release; or (B) clear and convincing evidence that the person has violated any other condition of release;
 7 *and* (2) finds that – (A) based on the factors set forth in section 3142(g) of this title, there is no condition
 8 or combination of conditions of release that will assure that the person will not flee or pose a danger to
 9 the safety of any other person or the community; or (B) the person is unlikely to abide by any condition
 10 or combination of conditions of release. 18 U.S.C. § 3148(b).” (emphasis added).

11 Section 3148(b) further provides “[i]f there is probable cause to believe that, while on
 12 release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no
 13 condition or combination of conditions will assure that the person will not pose a danger to the safety of
 14 any other person or the community.” 18 U.S.C. § 3148(b).

15 **C. Factual Basis for the Instant Motion**

16 For the reasons discussed below, the government submits that there is probable cause to believe
 17 that while on release Chiu committed the federal felony offense of possession of marijuana with intent to
 18 distribute and clear and convincing evidence that Chiu violated the special condition of release that he
 19 not possess a controlled substance. Based on Chiu’s conduct and by operation of the provisions of
 20 Section 3148(b), there is a rebuttable presumption that there are no conditions or combination of
 21 conditions that will assure that Chiu will not pose a danger to community. Moreover, Chiu has amply
 22 demonstrated that he is unlikely to abide by any condition or combination of conditions of release.
 23 Chiu’s release should be revoked and he should be detained for the pendency of the proceedings in the
 24 instant case.

25 As set forth in the Petition for Arrest Warrant for Defendant Under Pretrial Supervision, filed
 26 under seal by Pretrial Services Deputy Chief Officer Silvio Lugo on April 25, 2014, Pretrial Services
 27 Officer Taifa Gaskins with the Eastern District of California visited Chiu at his home on Pebble Beach
 28 Drive in Vallejo on the morning of April 25, 2014. *See*, Exhibit 4, attached. This was a pre-scheduled

1 initial home visit. Chiu was present for the visit and told Officer Gaskins that he did not want her to tour
2 the upstairs of the residence. Officer Gaskins requested that she be allowed to tour all parts of the
3 residence. When Chiu agreed and led her to the upstairs portion of the residence, Chiu said he did not
4 want Officer Gaskins to enter one of the bedrooms. Chiu opened the door of the bedroom slightly and
5 Officer Gaskins could see that a tarp was hanging behind the door and that some sort of modification of
6 the room had taken place. When Officer Gaskins asked Chiu about the room, he told her that he was
7 “growing something” in the room. Concerned for her safety, Officer Gaskins left the residence. Once
8 outside the residence with Chiu, Chiu advised her that he was growing 100 marijuana plants. He
9 explained that he understood that growing marijuana plants was illegal, but he “needed the money.” *Id.*

10 Officers with the Solano County Sheriff’s Office Narcotics Task Force and agents with the
11 Sacramento Office of the FBI arrested Chiu on April 25, 2014 at the Pebble Beach Drive residence
12 pursuant to the warrant authorized by Magistrate Judge Cousins. Sheriff Department officers held Chiu
13 at the scene pending the arrival of Special Agents Emmanuel Pascua and David VanderPorten of the FBI
14 San Francisco Division, who were to transport Chiu to San Francisco for an initial appearance. Officers
15 also froze the scene pending presentment of a search warrant application to a local judge.

16 Agents Pascua and VanderPorten arrived at the scene and took Chiu into custody. They were
17 advised by a Narcotics Task Force Officer that Chiu’s wife, who was present at the scene, had provided
18 consent to enter the property. Agent Pascua entered the residence accompanied by a Task Force Officer
19 and observed marijuana plants growing in three rooms on the upstairs level. Two rooms contained
20 mature plants with buds; the third room contained less mature plants. The rooms were set up as full-
21 blown growing operations with lights, ballasts, and watering systems.

22 On April 25, 2014, local authorities obtained a warrant to search the Pebble Beach Drive
23 residence and executed the warrant after Agents Pascua and VanderPorten departed with Chiu in
24 custody. The officers seized a total of 405 marijuana plants from the residence.

25 **D. Conclusion and Recommendation**

26 In light of Chiu’s clear violation of the terms and conditions of release that he not possess any
27 controlled substances and the evidence sufficient to establish probable cause that Chiu has committed a
28 violation of 21 U.S.C. § 841(a)(1), possession of marijuana with intent to distribute, the government

1 moves to revoke Chiu's release. The government further submits that by his actions, Chiu has
2 demonstrated that there are no conditions or combination of conditions that would assure that he will not
3 pose a danger to the community. Alternatively, Chiu has demonstrated that he is unlikely to abide by
4 any conditions of release that this Court may impose.

5 When Chiu was initially arrested, the government agreed to release on condition that his wife act
6 as surety. Chiu had engaged in money laundering offenses, but was not involved in selling or conspiring
7 to deal in firearms, nor was he involved in any drug offenses. In addition, Chiu has no criminal record.
8 The Court, Pretrial Services, and the government were prepared to accept Chiu's word that if released,
9 he would respect the Court's authority and abide by the conditions of release imposed by the Court.

10 Based on what transpired a week ago, it is now apparent that Chiu had no intention of abiding by
11 those conditions. Either he had an ongoing marijuana grow operation in his and his wife's residence
12 when he and his wife signed the bond in Court on March 26, 2014, or he has since moved a grow
13 operation into the residence. In either case, Chiu's violation of the Court's order is flagrant and
14 constitutes a serious new crime. If prosecuted by federal authorities, Chiu is facing a five-year
15 mandatory minimum sentence and up to forty years imprisonment for possessing 100 or more marijuana
16 plants. He admitted to Pretrial Services Officer Gaskins that he knew his acts were illegal, but he did it
17 for the money. If Chiu would engage in such blatantly illegal and risky behavior within a month of
18 being arrested and released on other federal criminal charges, there is no reason to have any confidence
19 that he would not turn around and engage in other illegal conduct because he needs money.

20 The fact that this discovery of a marijuana grow operation in Chiu's house took place thirty days
21 after his release on bond is an aggravating factor here. Similarly disconcerting and problematic is that
22 the surety who co-signed the bond is Chiu's wife, who according to her statement to the Court when she
23 signed the bond, lives in the Pebble Beach Drive residence. Given the nature and extent of the grow
24 operation, the surety must have known what was taking place inside the house. Suffice it to say she is
25 no longer an individual in which the Court can have any confidence and she is no longer suitable as a
26 surety.

27 In sum, there is sufficient evidence in this case to raise the rebuttable presumption under Section
28 3148(b) that no condition or combination of conditions would assure that Chiu will not pose a danger to

1 the community. In addition, there is clear and convincing evidence that Chiu has violated a condition of
2 release and he is unlikely to abide by any condition or combination of conditions of release.
3 Accordingly, this Court should order revocation of Chiu's release and his detention pending trial.
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5 DATED: May 1, 2014

Respectfully submitted,

6 MELINDA HAAG
United States Attorney

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8 /s/
SUSAN E. BADGER
Assistant United States Attorney
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